

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**TOWN OF NORTH PROVIDENCE**

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:

v.

**C.A. No. M14-0010  
14407500610**

**JULIA DALOMBA**

**DECISION**

**PER CURIAM:** Before this Panel on August 6, 2014—Administrative Magistrate Cruise (Chair, presiding), Judge Parker, and Magistrate Abbate sitting— is Julia Dalomba’s (Appellant) appeal from a decision of Judge Lombardi of the North Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-20-9, “Obedience to stop signs.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On March 20, 2014, Officer Kevin Gidden of the North Providence Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on May 19, 2014.

At trial, the Officer testified that on March 20, 2014, at approximately 5:00 p.m., he was at a fixed post at the intersection of Florence Street and Borah Street in the City of North Providence. (Tr. at 2.) The Officer explained that there is a four-way stop sign at that intersection. Id. The Officer stated that he had a clear and unobstructed view when he observed Appellant’s vehicle go through the stop sign at that intersection without coming to a complete stop. Id.

Thereafter, Appellant testified that she came to a complete stop at the stop sign. (Tr. at 3.) The Appellant also stated that she has lived in the area twenty-three years and is aware of the importance of obeying stop signs. Id.

Subsequently, the trial judge issued his decision sustaining the charged violation. (Tr. at 7-8.) In particular, the trial judge credited the Officer's testimony that he had observed Appellant's vehicle pass through the intersection without stopping at the stop sign. (Tr. at 8.) Aggrieved by the trial judge's decision to sustain the charge, Appellant timely filed the instant appeal.

### **Standard of Review**

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the

hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On appeal, Appellant contends that the trial judge’s decision to sustain the charge was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant asserts that the trial judge erred by crediting the Officer’s testimony over her own.

In Link, our Supreme Court made clear that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[,] and disbelieve[.]” Environmental Scientific

Corp., 621 A.2d at 206. Our Supreme Court has consistently held that “[t]he task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.” Greensleeves, Inc. v. Smiley, 68 A.3d 425, 436 (R.I. 2013) (citing Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I.2003)). Furthermore, the Court “affords a great deal of respect to the \* \* \* credibility assessments made by the [trial justice].” Id.

After listening to the testimony, the trial judge determined that the Officer’s testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. “[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact.” Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial judge considered both the Officer’s testimony and the Appellant’s testimony that she made a complete stop at the stop sign. See Tr. at 3. However, the trial judge found the Officer’s testimony more credible. See Tr. at 8. The trial judge credited the Officer’s testimony that he observed Appellant’s vehicle go through the stop sign at that intersection without coming to a complete stop and that he had a clear and unobstructed view of Appellant committing the instant violation. See Tr. at 2. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial judge’s] findings and conclusions unless clearly wrong.).

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

\_\_\_\_\_  
Associate Judge Edward C. Parker

\_\_\_\_\_  
Magistrate Joseph A. Abbate

DATE: \_\_\_\_\_

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.